

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2
3 JOHN KARPINSKI, CLARK COUNTY NATURAL
4 RESOURCES COUNCIL and FUTUREWISE,

5 Petitioners,

6 v.

7
8 CLARK COUNTY,

9 Respondent,

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11 And

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13 GM CAMAS, L.L.C., JOHNSTON DAIRY, et al and
14 MACDONALD PROPERTIES, DARYL GERMANN,
15 CURT GUSTAFSON, T3G, LLC, HINTON
16 DEVELOPMENT CORPORATION, BUILDING
17 INDUSTRY ASSOCIATION OF CLARK COUNTY
AND CITY OF LA CENTER,

18 Intervenors.
19

Case No. 07-2-0027

**ORDER FINDING CONTINUING
NONCOMPLIANCE AND
INVALIDITY**

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21 **I. SYNOPSIS**

22 In this Order, the Board finds that Clark County remains noncompliant with RCW 36.70A.
23 020(2) and (8) and RCW 36.70A.170(1) and further finds that continued invalidity of portions
24 of Clark County Ordinance No. 2007-09-13 (the Ordinance) is necessary to avoid
25 substantial interference with fulfillment of the goals of Chapter 36.70A (the GMA), all as set
26 forth in the Board's Amended Final Decision and Order (FDO) dated June 3, 2008.
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28 **II. PROCEDURAL HISTORY**

29 THIS Matter came before the Board at a compliance hearing on January 6, 2009 held
30 pursuant to the Board's FDO. The FDO arose from a Petition for Review filed by John
31 Karpinski, Clark County Natural Resource Council, and Futurewise challenging, among
32

1 other things, the de-designation of agricultural lands of long term significance and the
2 addition of those lands to Clark County cities' Urban Growth Areas (UGAs).

3
4 The Board found that the following areas were non-compliant with GMA mandates and
5 invalidated the Ordinance¹, as it pertained to those areas:

6 **Battle Ground-BC**

7 **Camas-CA-1**

8 **Camas-CB**

9 **La Center-LB-1**

10 **La Center-LB-2**

11 **La Center-LE**

12 **Ridgefield-RB-2**

13 **Vancouver-VA**

14 **Vancouver-VA-2**

15 **Vancouver-VB**

16 **Washougal-WB**

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19 The FDO included a Compliance Order directing the County on remand of the Ordinance to
20 take the necessary legislative action to comply with the goals and requirements of the GMA
21 as set forth with particularity in the FDO.
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24 Subsequent to the issuance of the FDO, the City of LaCenter, Clark County, GM Camas
25 LLC, the McDonald Living Trust and Renaissance Homes appealed the Board's decision to
26 the Clark County Superior Court.² Thereafter, in July 2008, the City of LaCenter filed an
27 Application for Direct Review with the Board that was denied by Order dated July 31, 2008³.
28 The parties' consolidated appeals remain pending in Superior Court. None of the parties
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31 ¹ Amended Final Decision and Order at pg. 72

32 ² Clark County Sup. Ct. Cause Nos. 08-2-03625-5; 08-2-03649-2; 08-2-03657-3; 08-2-03659-0; & 08-2-03680-8.

³ Denial of Application for Direct Review.

1 have sought or obtained a stay of the Board's ruling. The County failed to file a compliance
2 report as required by Board order nor was any objection to that failure filed by Petitioners.

3 4 **III. BURDEN OF PROOF**

5 For purposes of board review of the comprehensive plans and development regulations
6 adopted by local government, the GMA establishes three major precepts: a presumption of
7 validity; a "clearly erroneous" standard of review; and a requirement of deference to the
8 decisions of local government.

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10 Pursuant to RCW 36.70A.320(1), comprehensive plans, development regulations and
11 amendments to them are presumed valid upon adoption:

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13 Except as provided in subsection (5) of this section, comprehensive plans and
14 development regulations, and amendments thereto, adopted under this chapter
15 are presumed valid upon adoption.

16 This same presumption of validity applies when a local jurisdiction takes legislative action in
17 response to a noncompliance finding; that legislative action is presumed valid. The only
18 time that the burden of proof shifts to the County is when the County is subject to a
19 determination of invalidity.⁴ The Board imposed invalidity in this matter as referenced
20 above.
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22 Therefore, the County has the burden to demonstrate that it has taken actions to comply
23 with the Board's Order. The County acknowledges that it has taken no such action. Rather,
24 it takes the position that the question of whether or not the County is in compliance remains
25 subject to determination by the courts. However, it further acknowledges that it intends to
26 fully comply with any final court ruling.
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⁴ RCW 36.70A.320(2) and (4).
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IV. DISCUSSION OF THE ISSUES

The issues before the Board are whether or not the County remains out of compliance and whether or not invalidity should be continued. The Petitioners argue the County has done nothing to comply and urge the Board to maintain the findings of noncompliance and invalidity. The County acknowledges it has taken no action other than to participate in the appeal pending in Clark County Superior Court. The County further concedes that it has not sought a stay of the Board's Order and further asserts that whether or not it is in compliance is subject to determination by the courts.

The Board can only conclude that the County remains non compliant and that invalidity should be continued. It is particularly troublesome to the Board that the County has in effect ignored the Board's directives as evidenced by the County's failure to pursue a stay or to file by the date required any report whatsoever regarding compliance.

RCW 36.70A.330 (3) states,

If the board after a compliance hearing finds that the state agency, county, or city is not in compliance, the board shall transmit its finding to the governor. The board may recommend to the governor that the sanctions authorized by this chapter be imposed. The board shall take into consideration the county's or city's efforts to meet its compliance schedule in making the decision to recommend sanctions to the governor.

The Board expects local jurisdictions to comply with deadlines established for the filing of compliance reports. The County's lack of response to the Board's Order is not taken lightly. However, in this particular instance, due to the lack of any request for a recommendation for sanctions from any party and the County's acknowledgment of its obligation to comply with Board Orders, the Board elects not to pursue that possibility at this time.

The relevant Findings of Fact and Conclusions of Law set forth in the May 14, 2008 Final Decision and Order as amended June 3, 2008, are incorporated herein by reference.

1 **V. ORDER**

2 Clark County shall take the necessary legislative action to bring Ordinance No. 2007-09-13
3 into compliance with the GMA within 180 days of its last compliance deadline in accord with
4 the following schedule:

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Item	Date Due
Compliance Due	July 7, 2009
Statement of Actions Taken and Index to Compliance Record Deadline	July 17, 2009
Objections to a Finding of Compliance Deadline	July 31, 2009
Response to Objections Deadline	August 14, 2009
Compliance Hearing	September 2, 2009

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13 Entered this 8TH day of January, 2009.
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16 _____
17 Holly Gadbow, Board Member

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19 _____
20 William Roehl, Board Member

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22 _____
23 James McNamara, Board Member

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26 Pursuant to RCW 36.70A.300 this is a final order of the Board.

27 **Reconsideration.** Pursuant to WAC 242-02-832, you have ten (10) days from the
28 mailing of this Order to file a petition for reconsideration. Petitions for
29 reconsideration shall follow the format set out in WAC 242-02-832. The original and
30 three copies of the petition for reconsideration, together with any argument in
31 support thereof, should be filed by mailing, faxing or delivering the document directly
32 to the Board, with a copy to all other parties of record and their representatives.
Filing means actual receipt of the document at the Board office. RCW 34.05.010(6),

1 WAC 242-02-330. The filing of a petition for reconsideration is not a prerequisite for
2 filing a petition for judicial review. A response to a Motion for Reconsideration must
3 be filed within 5 days of the filing of the motion.

4 Judicial Review. Any party aggrieved by a final decision of the Board may appeal the
5 decision to superior court as provided by RCW 36.70A.300(5). Proceedings for
6 judicial review may be instituted by filing a petition in superior court according to the
7 procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil
8 Enforcement. The petition for judicial review of this Order shall be filed with the
9 appropriate court and served on the Board, the Office of the Attorney General, and all
10 parties within thirty days after service of the final order, as provided in RCW
11 34.05.542. Service on the Board may be accomplished in person, by fax or by mail,
but service on the Board means actual receipt of the document at the Board office
within thirty days after service of the final order.

12 Service. This Order was served on you the day it was deposited in the United States
13 mail. RCW 34.05.010(19).
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